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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN KELLER NORRIS (1), Defendant.	Criminal Case No. 07cr2913-L DATE: February 19, 2008 TIME: 8:30 a.m. GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION FOR DOWNWARD DEPARTURES

The United States of America, by its counsel, Karen P. Hewitt, United States Attorney, and Mitchell D. Dembin, Assistant United States Attorney, hereby responds to and opposes the Defendant's Motion for Downward Departures.

I

STATEMENT OF FACTS

In around mid-March, 2007, the defendant decided to break into the offices of his former employer, The Imperial Group. For financial reasons, the defendant decided that he had to determine what The Imperial Group had bid on a project to build and manage a facility for the Department of Homeland Security, Immigration and Customs Enforcement, in El Centro. The defendant's company also had submitted a bid to the United States General Services Administration on the project.

By March 23, 2007, the defendant convinced his son to join him in the crime. From the accounts of both the defendant and his son, the defendant was the moving force and his son was a reluctant participant. On the 23rd, with the defendant's son standing guard, the defendant went into the building where the offices of The Imperial Group was housed for what they both considered to be a practice run. During the practice run, the defendant confirmed that the door to the janitorial closet was unlocked and removed a key that he confirmed would open the doors to The Imperial Group's offices. He also confirmed that he could lock the stairway door leading to the floor on which The Imperial Group was located so that anyone wishing to access that floor had to use the elevator. It was the elevator that was being covered by the defendant's son.

During the week leading up to Easter Sunday, the defendant called the offices of his former employer and asked questions regarding the weekend plans of his former colleagues. Unbeknownst to the defendant, his practice run of March 23 was noticed by a janitorial supervisor who routinely reviewed security camera tapes to confirm the activities of the janitorial staff. The janitorial supervisor recognized the defendant and thought his conduct odd enough to warrant warning The Imperial Group. Based upon that warning, The Imperial Group installed surveillance cameras in its offices and removed the bid book for the ICE facility from its offices.

On Easter Sunday, April 8, the defendant again entered the building and took the elevator to the floor housing the offices of The Imperial Group. The defendant's son waited downstairs watching the front door and the elevator. They remained in constant cell phone contact. Arriving at the right floor, the defendant walked toward the janitorial closet carrying a cleaning pail and covering his face with a piece of cardboard. He maneuvered himself under the security camera and taped its lens. Following his earlier plan, he likely then locked the stairway door and obtained the key from the janitorial closet. He used the key to enter the offices of The Imperial Group without authority and was captured by The Imperial Group's surveillance system. He was observed rummaging through files with a flashlight stuck in his teeth and reporting his progress to his son by cell phone. Unable to locate the bid book, the defendant took a set of plans for the proposed ICE building and left.

A federal search warrant was obtained for the defendant's offices. During the execution of the warrant, the defendant and his son were interviewed. After some initial prevarications, both confessed. Hiring attorneys, both defendants approached this office for pre-indictment discussions. Those discussions resulted in the instant plea of the defendant and a deferred entry of plea for his then 33 year old son who, based on the available evidence, acted only to try and protect his father after failing to dissuade him from his criminal course of action.

II

THE DEPARTURES RECOMMENDED BY THE DEFENDANT ARE NOT WARRANTED

Although presented as a single departure based upon circumstances not covered by the Sentencing Guidelines, the gravamen of the defendant's motion is that his conduct should be considered aberrant and that he accepted responsibility in an extraordinary manner. Each of these will be discussed below.

A. The Defendant's Conduct is not Aberrant Under the Advisory Guidelines

The defendant planned this crime over a period of weeks. He engaged in a practice run and made a pretext call to his victim to confirm that the offices would be empty. Worst of all, he convinced his reluctant son to join him in the endeavor. Consequently, this is far from an impulsive act and cannot be considered aberrant under Section 5K2.20(b).

The defendant is correct that this is his first offense and represents a marked deviation from an otherwise law-abiding life. That is true but would apply equally to every first offender that appears before the Court. The fact that this offense required significant planning, including a practice run, and required the defendant to convince another to join him mitigates strongly against this departure.

B. The Defendant's Acceptance of Responsibility Was Extraordinary

There was going to be no question that the defendant was going to be debarred from bidding on GSA contracts in the future. The defendant was importuned, however, by the United States to work with GSA to unravel any of his standing projects with GSA. The defendant did avail himself of this suggestion and did save GSA time and effort in identifying contracts in which the defendant had an interest and undertaking the administrative proceedings to remove the defendant from these contracts. The advisory Guidelines address extraordinary assistance in a related context at Section 3E1.1(b). The United States does not object to an additional point in the form of a downward departure for the defendant's extraordinary assistance consistent with what would have been accorded had the defendant's base offense level been level 16. The United States does not agree that 2 points are warranted.

III

CONCLUSION

For the foregoing reasons, the defendant's motions should be denied and granted as provided herein.

Date: February 11, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Mitchell D. Dembin
MITCHELL D. DEMBIN
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN KELLER NORRIS (1), Defendant.	))))))))))	Case No. 07cr2913-L CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, MITCHELL D. DEMBIN, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Response and Opposition to Defendant's Motions on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Charles H. Dick, Jr.
   Email: charles.h.dick@bakernet.com

2. Colin H. Murray
   Email: colin.h.murray@bakernet.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2008.

s/Mitchell D. Dembin
MITCHELL D. DEMBIN